

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1009 of 1997

to

FIRST APPEALNo 1038 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
STATE OF GUJARAT

Versus

RABARI VASA JINA,DIED,THRO'HISHEIRS

-----  
Appearance:

MS HARSA DEVANI, AGP for Appellants  
MR VIPUL MODI, for Respondents- Orig. Claimants.

-----  
CORAM : MR.JUSTICE Y.B.BHATT and  
MR.JUSTICE C.K.BUCH

Date of decision: 04/05/98

ORAL COMMON JUDGEMENT ( PER : Y.B.BHATT, J )

Heard the ld. counsel for the respective parties.

Appeals are admitted. Mr. Vipul Modi waives service on behalf of the respondents- orig. claimants.

2. On the joint request of the ld. counsel for the respective parties, these appeals are taken up for final hearing today.

3. As a result of the hearing and discussion, a broad consensus has been arrived at between the ld. counsel on the basis of which we are rendering our findings recorded herein after. Under the circumstances, we are of the opinion that no detailed reasons are required to be given.

4. These are appeals filed under Sec.54 of the Land Acquisition Act read with Sec.96 of the CP Code by the State of Gujarat, challenging the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

5. The lands in question were acquired for the construction of Sipu Reservoir, and are situated in village Bhakodar, Ta :Dhanera, Dist.: Banaskantha.

6. We have carefully perused the impugned judgment and have further perused such evidence as the ld. counsel for the respective parties have referred to us.

6.1 In the context of a true and correct interpretation of such evidence, in conjunction with the broad consensus referred to herein above, we find that the impugned awards require substantial modification.

7. The Reference Court has awarded Rs. 900/ per Hectare for Kharaba land, that is to say, unused waste land, which appears to be excessive and as conceded by the ld. counsel for the respondents- orig. claimants a fair and reasonable value thereof would be Rs. 100/ per Hectare. We hold and direct accordingly.

8. The Reference Court has also awarded to the claimants Rs.. 30,000/ for constructed well and Rs. 5000/ for unconstructed well. Again, this requires interference in view of the decision of the Supreme court in the case of State of Bihar v/s Ratanlal Sahu & Ors., reported at (1996) 10 SCC P.635, following the earlier decision in the case of O. Janardana Reddy & Ors. v/s Spl.Deputy Collector, LA Unit:IV, LMD, Karimnagar, A.P. & Ors., reported at (1994) 6 SCC P.456. In all fairness the ld. counsel for the respondents - orig. claimants concedes that the award in respect of wells is not sustainable and therefore the compensation on this count must be disallowed. Accordingly we hold and direct that

no compensation is awardable for the wells located on the acquired lands.

9. The same situation arises in respect of the compensation claimed as also awarded under the head "Fruit trees & other trees". We clarify in this context that it is not a question of law but is mere question of fact, that it appears that the evidence on record for awarding compensation under this head is weaker, uncertain and inadequate. Ld. counsel for the respondents-orig. claimants therefore in all fairness admitted that the compensation under the aforesaid head may be found to be unjustified and that may be deducted from the total compensation payable to the claimants under other heads. Therefore we hold and direct accordingly.

10. The same situation on a question of fact pertains to the compensation under the head of pipelines etc. As in the case of "Fruit trees & other trees" discussed herein above, the ld. counsel for the respondents- orig. claimants fairly stated that no compensation may be payable for pipelines and the said amount may be deducted from the total compensation payable to the claimants under the head of pipelines etc. We therefore hold and direct accordingly.

11. However, there is another aspect on which ld. counsel for the appellant State was required to concede, namely deduction made by the Reference Court of 5% of the total compensation payable to the claimants, on account of the fact that the acquired land was New Tenure land. Such deduction is contrary to the well-settled law on the subject. The Supreme Court has laid down in the case of State of Maharashtra v/s Babu Govind, reported at AIR 1996 SC P.904, that no deduction ( whether 5% or at any other rate) is justified merely on account of the fact that the land happens to be a New Tenure land. This decision of the Supreme Court has also been followed by this Court in the case of Deputy General Manager, ONGC v/s Chaturji Lalaji & Ors., reported at 39(1) GLR P.130. Thus, the impugned judgment and awards requires modification in a different context and the amount so deducted by the Reference Court is required to be paid to the respective claimants. Therefore we hold and direct accordingly.

12. So far as the determination of the market value of the acquired land is concerned, we find that the Reference Court has in fact arrived at a market value thereof at Rs. 35000/ per Hectare at a flat rate,

irrespective of whether the land was irrigated or non-irrigated. However, without discussing the necessary aspect of the differentiation in the judgment and without discussing any relevant and material evidence on record, the Reference Court has ultimately set out different rates for irrigated land and non-irrigated land. In this context, the ld. counsel for the respective parties have also arrived at a consensus that such a distinction and/or differentiation is not necessary on the facts of the case. We therefore hold and direct accordingly.

13. So far as the actual determination of the market value of the acquired land is concerned, the rate awarded by the Reference Court may be regarded to be (in the first instance) at Rs. 35000/- per Hectare. In view of the evidence on record, we are satisfied that no reduction in the said rate of the market value is justified nor any attempt to plead for further reduction is sustainable. We therefore uphold the valuation of the acquired land at Rs. 35000/- per Hectare as determined by the Reference Court.

14. In view of the confused language used by the Reference Court, it is hereby clarified and declared that the respondents- original claimants shall be entitled to the additional compensation under Sec.23(1-A) at the rate of 12% p.a. on the market value of the land for the period from the date of publication of the notification under Sec.4(1) to the date of the award of the Collector or the date of taking possession of the land whichever is earlier.

14.1 It is further clarified and declared that the respondents - orig. claimants shall be entitled to the solatium at the rate of 30% on the market value of the acquired land.

15. It is further held and declared that the respondents- orig. claimants shall be entitled to interest under Sec.28 of the said Act at the rate of 9% p.a. for the first year commencing from the date on which possession was handed over, and at the rate of 15% from the end of such first year, on the amount of difference between the amount awarded by the Collector under his award under Sec.11 and the amount of compensation awarded by the Reference Court (and as confirmed by us herein) till the date when such difference is paid to the claimants or deposited in the Court.

16. Ld. counsel for the appellant has also raised a

question of limitation with a view to support the contention raised before the Reference Court. In this context, it is submitted that the references were in fact time-barred and that no amount of compensation was therefore awardable to the claimants under Sec.18.

16.1 However, when this contention was sought to be developed, it was found that there is no substantial and/or reliable or even essential evidence available on record to justify this plea. Thus, on the facts of the case, the ld. counsel for the appellant was not able to pursue this contention any further. This contention therefore does not require any further discussion.

17. No other contention is raised.

18. In view of our findings and observations recorded herein above, the impugned judgment and awards are quashed and set aside (to the extent referred to herein above) and shall be substituted by the aforesaid findings and observations. These appeals therefore stand partly allowed with no orders as to costs. Decree accordingly.

00000000

\*rawal

Please verify the original.